

Minutes of the Special and Regular Meeting of July 24, 2007

One Twin Pines Lane, Belmont, California

SPECIAL MEETINGS

CLOSED SESSION - 6:20 P.M.

- A. Conference with Labor Negotiator, Jack Crist, pursuant to Government Code Section No. 54957.6: AFSCME and MMCEA

Attended by Councilmembers Dickenson, Feierbach, Mathewson, Lieberman, Warden (arr. 6:45 p.m.), City Manager Crist, Deputy City Attorney Rubens, Human Resources Director Sam, Community Development Director de Melo, Police Chief Mattei, and Labor Negotiator Fran Buchanan. City Clerk Cook was excused from attending.

ADJOURNMENT at this time, being 7:25 P.M.

Terri Cook

City Clerk

This meeting not tape recorded or videotaped.

REGULAR MEETING

CALL TO ORDER 7:40 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Dickenson, Lieberman, Feierbach, Warden, Mathewson

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Crist, Deputy City Attorney Rubens, Community Development Director de Melo, Police Chief Mattei, Finance Director Fil, Human Resources Director Sam, Public Works Director Davis, Special Council Mark Mendel (via telephone), City Clerk Cook.

REPORT FROM CLOSED SESSION

Mayor Feierbach stated that direction was given but no action taken during Closed Session.

SPECIAL PRESENTATIONS

Mayor Feierbach noted that the City received a Certificate of Appreciation from HIP Housing (Human Investment Project) for the City's participation in their housing program. Proclamations from Assembly member Gene Mullin and Congressman Tom Lantos were also received.

PUBLIC COMMENTS AND ANNOUNCEMENTS

Jocelyn Won, AFSCME Council 57 Representative, stated that the AFSCME bargaining unit was currently in negotiations with the City. She noted that it is not her desire to be confrontational. She would like the City to know the faces of the people represented by AFSCME, and noted their presence in the Council Chambers. Pending legislation regarding retirement benefits could impact workers. It is her desire to work together with the Council to find a resolution to the contract negotiations.

Arno Jacobi, City Employee/AFSCME Member, stated that the bargaining unit desires to implement the 2.7 percent at age 55 formula. He noted that other cities offer this benefit, and Belmont is losing potential employees to those cities. He commented that AFSCME members are often called out after hours to take care of emergencies.

Pat Cornell, City Employee/AFSCME Member, stated that AFSCME employees often possess specialized skills to perform emergency repairs, and that they are often taken for granted.

Virgil Stevens, San Carlos resident, stated that he owns a parcel of vacant land in Belmont that he is trying to develop. He submitted a letter to the City Council (on file in the City Clerk's Office) and would like Council to consider his request and his comments.

Mayor Feierbach advised Mr. Stevens that the Council would review his letter, and she thanked the AFSCME members for attending tonight's Council Meeting.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Dickenson announced that the County would be holding the third annual Disaster Preparedness event at the County Fairgrounds on September 29th. He noted this is a popular event and there is much information available to the public. He stated he met with Senator Simitian regarding the solar net metering issue, and the Twin Pines Fence Committee recently met.

Councilmember Mathewson stated that the first August meeting is George Metropulos Hawaiian Shirt Night. He recommended the Council come casual for that meeting. Councilmember Lieberman and Mayor Feierbach stated they would wear Belmont logo shirts.

AGENDA AMENDMENTS

City Clerk Cook noted that a member of the audience requested the removal of **Consent Item 4-E** (Ordinance Amending Belmont Zoning Code Section 2.16 (Definitions - Bedroom), for separate consideration. Councilmember Lieberman requested the removal of **Consent Item 4-F** (Ordinance Amending Belmont Zoning Code Section 8.1.4 (Parking - Scope of Regulations) for separate consideration.

ITEMS APPROVED ON CONSENT CALENDAR

Approval of Minutes of Special and Regular Meeting of June 12, 2007 and Special Meeting of June 25, 2007

Acceptance of Written Communication: State Water Resources Control Board Notice of Public Hearing on Stay Request by SF Bay Regional Water Quality Control Board

Approval to file Upgrade Live Scan Equipment to Meet New Department of Justice Requirements

Approval of Motion Setting a Public Hearing Date of August 14, 2007 to Act on the Proposed Vacation of Portions of Sixth and O'Neill Avenues (Emmett House Site) - Application No. 2006-0090

Adoption of Ordinance 1028 Amending Belmont Zoning Code Sections 9.6.3 (Additions and Alterations to Nonconforming Structures) & 23.5.4 (Special Provisions - Residential Districts - Permitted Signage) (Second Reading and Adoption)

ITEMS REMOVED FROM CONSENT CALENDAR FOR SEPARATE CONSIDERATION

Ordinance Amending Belmont Zoning Code Section 2.16 (Definitions - Bedroom) (Second Reading and Adoption)

Robert Mayer, Planning Commissioner, expressed concerns that this ordinance would restrict homeowners' rights to expand their home. There is no correlation between bedrooms and garage needs. He noted there was a long process to enact this amendment, and he is not looking to stop the process. He has not changed his opinion on this matter.

Mayor Feierbach noted that this ordinance will be reviewed in one year. Community Development Director de Melo clarified that although the ordinance does not contain this language specifically, it was part of the original motion to introduce the ordinance, and will be placed on the calendar for a one-year review.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Mathewson, Ordinance 1029 Amending Belmont Zoning Code Section 2.16 (Definitions - Bedroom) was adopted by a show of hands (4-1, Dickenson no).

Ordinance Amending Belmont Zoning Code Section 8.1.4 (Parking - Scope of Regulations) (Second Reading and Adoption)

Councilmember Lieberman stated he had second thoughts about this ordinance following the first reading at the last meeting. He does not think the application of these regulations is appropriate for the entire City.

Councilmember Warden stated that he supports the ordinance, especially since it has a one-year review provision. He would like to explore a future City-wide parking ordinance.

Councilmember Dickenson stated that he concurs with Councilmember Lieberman.

Mayor Feierbach expressed support for the ordinance, and commented that she would like to further explore parking prohibitions on street sweeping days. Councilmember Warden concurred.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Mathewson, Ordinance 1030 Amending Belmont Zoning Code Section 8.1.4 (Parking - Scope of Regulations) was adopted by a show of hands (3-2, Dickenson/Lieberman no).

HEARINGS

Public Hearing to Consider Declassification of a Designated Historic Resource Located at 525 Kingston Avenue, Pursuant to Municipal Code Section 7-182

Community Development Director de Melo outlined the background of the project and the associated Hearings held by the Planning Commission. Now that the home has been substantially remodeled, the Commission determined that it no longer qualifies as historic, and the historic context of the existing carport and potting shed is gone. Those buildings should be removed as they are in poor condition. He noted that there is an upcoming Priority Calendar item during the current fiscal year to review Belmont's historic structures and landmarks.

In response to Council questions, Community Development Director de Melo clarified that the home fell into disrepair since the 1991 Historic Structure Survey was performed by the City. The new owners discovered significant dry rot, and the home was not salvageable. He added that the new home is a beautiful building, but is no longer historic. Some of the original home's details were replicated. He noted that the Historical Society expressed its concerns for the need to update the 1991 Survey.

Mayor Feierbach opened the Hearing.

Carol Peterson, Belmont resident, stated that the potting shed was the original home of the gatekeeper for the original property. The new home looks similar to the old one, but is nicer. She supports the removal of historic significance designation.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Dickenson, the Public Hearing was unanimously closed by a show of hands.

ACTION: On a motion by Councilmember Lieberman, seconded by Councilmember Dickenson, Resolution 9903 Declassifying a Designated Historic Resource Located at 525 Kingston Avenue was unanimously approved by a show of hands.

RECESS: 8:15 P.M.

RECONVENE: 8:20 P.M.

Public Hearing to Consider an Ordinance Setting Sewer Charge Rates and Resolution Approving Fiscal Year 2007-08 Sewer Charges For Collection on County Tax Roll

Assistant Finance Director Cheung explained the protest process, as well as the sewer charge formula, which is based on winter water usage. Residents have been conserving, so the majority of low-strength users will likely experience a reduction in their sewer charge. Over half of the residents who submitted an official protest will see a reduction. Because of the reduction in water use, even with a 12 percent increase in rates, the net increase in total revenue will be approximately 1.3 percent. The minimum charge has been reduced. This small increase will not meet the projected capital needs. He outlined the need for both the urgency and non-urgency ordinances to set the rates.

In response to Councilmember Warden, Special Council Mendel clarified that the City may still impose the new rate with the adoption of a non-urgency ordinance, although the legal authority may not be as clear as if Council were to adopt an urgency ordinance. An urgency ordinance goes into effect immediately. He explained the timing issue with the pending deadline for forwarding the information to the County for the tax roll.

Public Works Director Davis reviewed the scheduled capital projects for 2008 and outlined the impact that various rate increases, up to 12 percent, would have on the ability to move forward with those projects. There would be a need to stretch the projects over a longer period of time due to the small net increase in total revenue. He noted that future capital needs for the South Bayside Systems Authority (SBSA) are not included in the proposed rate and revenue increase.

Councilmember Mathewson noted that SBSA is still refining the dollar impact, but it may be over \$100 million. Without a facility upgrade, there is a potential for spills into San Francisco Bay, and member cities could be subject to fines and jail time.

Councilmember Dickenson expressed a desire to look into utilizing gray water, which Redwood City does. Mayor Feierbach noted that they took out a loan to implement that program.

Mayor Feierbach opened the Hearing.

Ellen Fiebert, Belmont resident, stated that she has not had a raise in salary to match the raise in fee and tax increases.

Loring Di Martini, owner, Van's Restaurant, stated that his business will bear the brunt of the proposed raise in rates. Belmont recently raised trash rates by 25 percent, and he outlined the raises in fees over the years. There is a need for a more realistic increase.

Richard Hughes, Belmont resident, commented that fees for other services have increased over the years. He is opposed to the raise, and noted that he has been conserving water for 40 years and does not know how he could further conserve.

Betty Rausch, Belmont resident, requested clarification regarding how rates are calculated. She is against the increase. She noted that a previous error in her sewer charge was never rectified.

Assistant Finance Director Cheung explained that Mrs. Rausch is already at the minimum rate and will likely see a reduction in her bill.

Shaun Brennan, Belmont resident, requested clarification regarding the formula. He expressed concern for seniors and others on fixed incomes.

John Farnkopf, Hilton, Farnkopf & Hopson consultant, explained the sewer charge formula, and clarified that the rates are based on winter water use.

Tom Criss, Belmont resident, stated that he owns three parcels and is paying sewer charges on vacant lots.

Mayor Feierbach stated that the Public Hearing would be closed shortly, and advised anyone who wished to do so to submit a written protest, since no protests could be accepted once the Hearing was closed.

ACTION: On a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, the Public Hearing was unanimously closed by a show of hands.

City Clerk Cook noted that a total of 87 protests were received. She clarified that this total represented the number of parcels, not letters, since some people own more than one parcel.

Mayor Feierbach stated that a majority protest was not received, since there are 8,272 parcels in Belmont affected by this proposed rate increase.

Councilmember Lieberman stated he understands the desire that there not be an increase in rates. He noted that some owners will experience a decrease in their bill, even with the raise in rates. Money is needed for infrastructure improvements. We can pay now or pay later. There is a risk of catastrophic failure if projects are delayed. All projects are needed.

Councilmember Dickenson noted that he did not support the recent bond issuance for sewer projects. Money is going to consultants. Rates are being raised too high and too fast. He cannot support a 12 percent increase. It is unfair to shift the revenue need to other rate payers. The process is confusing.

Mayor Feierbach stated that she does not support sewer charges based on water use. She expressed concerns regarding future SBSA facility needs.

Councilmember Warden stated that sewer charges should comprise two components, water use and infrastructure needs, one being fixed, the other variable. He recommends changing the model. He noted that the previous formula was flawed as well, in that all parcels paid the same amount. He cannot make the findings required for an urgency ordinance, as the convenience of the County tax roll is not an urgency issue. He does not support hand billing and does not support a rate increase. He commented that the proposed rate increase may not help in the event of a catastrophic event.

In response to Council questions, Special Counsel Mendel clarified that the rate structure can be changed, and that a two-component structure is common. The City cannot generate revenues in excess of what is needed or the cost to provide service. There is a collection issue if hand-billing is used, as it is harder to collect since sewer charges are included in the tax roll. He clarified that without the urgency ordinance, the new rate can still be applied to next year's tax roll by adoption of a regular ordinance.

City Manager Crist noted that this is the first test of Proposition 218 requirements, and the need to comply with the provisions has forced the narrow window of time to implement the new rate. The process will begin sooner in subsequent years, which will eliminate the need for future urgency ordinances. He noted that \$1.1 million would need to be cut from the capital budget if no increase is implemented, and the increase was built around an aggressive capital plan. He commented that the infrastructure needs have been neglected for many years.

Discussion ensued regarding the proposed capital project needs.

Councilmember Warden stated that if projects are needed, other sources of revenue should be found.

Council concurred to have a review of the rate structure in the future.

ACTION: Councilmember Warden made a motion to not adopt any ordinance, which was seconded by Councilmember Dickenson.

Special Council Mandel clarified that Proposition 218 requires the adoption an ordinance to implement any sewer rate. He recommended adopting a non-urgency ordinance at the existing rate. He noted that should a referendum be filed before the 30-day effective date of the ordinance, and the new rate had already been submitted to the County, the bill can be adjusted, credited, removed or reduced if necessary. The lowered minimum rate would be necessary to enact, since the Council cannot adopt any rate higher than what was outlined in the Public Hearing notice.

Councilmember Warden noted that the draft of the proposed non-urgency ordinance does not provide for setting the rates as they currently exist.

Mayor Feierbach polled the Council regarding the maximum increase that each member could support.

Deputy City Attorney Rubens stated that the City could run the risk of a Proposition 218 compliance issue if an ordinance is not adopted.

Mayor Feierbach noted that this item would be continued to later in the evening to give staff an opportunity to draft new ordinance language.

RECESS: 10:00 P.M.

RECONVENE: 10:15 P.M.

MATTERS OF COUNCIL INTEREST/CLARIFICATION (items taken out of order on agenda)

**Consideration of city tax/fee rebate program for resident purchases of hybrid vehicles (Warden)
(continued from 7/10/07)**

Councilmember Warden stated he proposed this idea based on public comments made during the recent smoking ordinance discussions. Car exhaust is poisonous. A rebate program could encourage people to consider hybrids.

Mayor Feierbach stated that a total cap would need to be established. Councilmember Dickenson recommended that this issue be discussed with the Green Task Force.

Council concurred to place this item on a future agenda for consideration.

Consideration of changes to business license tax fees/structure (Warden) (continued from 7/10/07)

Councilmember Warden stated that the home-based business license tax is too high. Some of these businesses are not even full-time. They pay a tax with no services rendered. A new license tax structure is needed. In addition, the existing fee structure contains a built-in inflationary rate of three percent, which he does not support.

Mayor Feierbach commented that some home-based businesses have a high impact with customers, and some have no impact. She concurs with the need to review this matter and would like information about what other cities do.

Councilmembers Lieberman and Warden noted that they each have home-based businesses and may have a conflict of interest regarding this matter.

Consideration of returning the money we are getting from Allied Waste (as a result of a settlement) back to the residents (Feierbach)

Mayor Feierbach stated that a consultant is being paid from this fund. She previously supported holding the money in a special fund for future capital needs, but now wants to return it back to the rate payers. She would support continuing with Phase I and II of the current plan.

Councilmember Dickenson stated he would support looking at options, including paying the debt back.

Councilmember Warden stated he would support using the monies to decrease rates and/or to apply to future rate reductions.

Councilmember Lieberman expressed concern that if the money is given to the current owner, it may not be the owner who overpaid in the first place.

Councilmember Mathewson stated he could support paying the money back, but wants to keep enough to pay the consultant to explore future garbage service options.

Council concurred to place this item on a future agenda for consideration.

MEETING EXTENSION: At this time, being 10:30 P.M., on a motion by Councilmember Dickenson, seconded by Mayor Feierbach, the meeting was unanimously extended to 11:00 P.M. by a show of hands.

PUBLIC HEARINGS (continued)

Public Hearing to Consider an Ordinance Setting Sewer Charge Rates and Resolution Approving Fiscal Year 2007-08 Sewer Charges For Collection on County Tax Roll

Staff provided drafts of new ordinance language, as requested prior to the recess.

ACTION: Councilmember Lieberman made a motion, seconded by Councilmember Mathewson, to adopt an ordinance setting the new minimum sewer rate of \$248.64, and to include a four percent increase in the per-unit charge, at \$5.20 per hundred cubic feet. This motion was defeated on a roll call vote of 4-1 (Dickenson, Mathewson, Warden, Feierbach no; Lieberman yes).

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Mathewson, and approved by a roll call vote (4-1, Lieberman no) to approve an ordinance setting the per hundred cubic feet rate at \$5.00, to waive further reading, and to set the second reading and adoption for August 14, 2007.

Mayor Feierbach opened the Public Hearing for the Resolution Directing the Filing of Charges to the County for the tax roll. No one came forward to speak.

ACTION: On a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, and unanimously approved by a show of hands to close the Public Hearing.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Dickenson, Resolution 9904 Confirming and Approving the Report of Sewer Charges for Fiscal Year 2007-08 and Directing the Filing of Charges for Collection by the County Auditor was unanimously approved by a roll call vote.

OLD BUSINESS

Update of Association of Bay Area Governments (ABAG) Regional Housing Needs Allocation (RHNA) Process (continued from 7/10/07)

Community Development Director de Melo noted that this report outlines the sub-region housing needs within San Mateo County. He explained the process of how the housing allocation is determined. Belmont will be required to produce 399 units over the next seven years. Staff estimates that Belmont could produce 200 to 250 units, based on future economic development and other development plans. He clarified that this report is for information only.

Discussion and Direction to Adopt a Policy for Maintaining Sewer Laterals and Responding to Emergency Sewer Call Outs

Public Works Director Davis noted that the City's policy is to respond to all calls regarding sewer lateral problems. A courtesy cleanout and video of the lateral is performed for the owner. The policy also requires that the property owner perform necessary repair or replacement. He outlined the fiscal impact if the City were to take on the responsibility for these repairs.

Mayor Feierbach concurred that the property owner should be responsible for these repairs.

Jacki Horton, Belmont resident, stated that the configuration of some streets creates problems with sewer laterals. She noted an issue with a neighbor's lateral. The problem occurs only in the winter.

Public Works Director Davis responded that the installation of a backflow preventer was recommended to the owner as a resolution to this problem, it has not been installed, and the owner is opening up the lateral and permitting the excess water to flow into their yard.

Councilmember Dickenson stated that poor work on sewer laterals in previous years is now creating problems. The connection to the main is sometimes the issue, especially in the Sterling Downs neighborhood.

Councilmember Warden stated that the City is responsible for the sewer main, and the lateral is installed with the home. The City could offer more service if rates continue to increase.

Public Works Director Davis described poor work on laterals by private contractors, which can be identified by videotape.

Councilmember Lieberman stated that the proposed policy is reasonable.

ACTION: Councilmember Lieberman made a motion, seconded by Councilmember Warden, to approve a resolution Adopting a Policy for Maintaining Sewer Laterals and Responding to Emergency Sewer Call Outs, to include language that owner is responsible for maintaining the sewer lateral.

Councilmember Warden offered a friendly amendment to review the policy in the future at the same time that sewer rates are reviewed. Councilmember Lieberman accepted the amendment.

ACTION: Resolution 9905 Adopting a Policy for Maintaining Sewer Laterals and Responding to Emergency Sewer Call Outs was approved, as amended, by a show of hands (4-1, Dickenson no).

ADJOURNMENT at this time, being 10:55 P.M.

Terri Cook

City Clerk

Council Meeting Tape Recorded and Videotaped
Audio Recording 671